IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No. 7980 of 2007

Shri Dattatreya Keshav Arekar ..Petitioner

vs.

Shri Kirtikumar Shantaram Vanjari ..Respondent

Mr.S.A.Vaidya for petitioner.
Mr.Rajiv Patil for respondent.

CORAM: S.C.DHARMADHIKARI J.
27th NOVEMBER, 2007

P.C.

1. Heard Shri Vaidya appearing for the petitioner/tenant and Shri Patil for respondent/landlord.

2. Initially, the respondent/landlord had sued for recovery of possession for his bonafide and reasonable requirement. In that proceedings he could not succeed but pursuant to the liberty granted by this Court, he instituted a fresh suit for eviction and this time he pressed into service three grounds while seeking possession of the suit premises, namely,(i) arrears of rent, (ii) that the tenant has not used the premises continuously for a period of six months prior to institution of the suit and (iii) that the tenant

has acquired suitable alternate accommodation.

3. The Trial Court found favour with the landlord on all grounds except non user. The petitioner/tenant and respondent/landlord both went to lower Appellate Court by filing an appeal and cross objections respectively.

4. The appeal of the tenant is dismissed and cross objections of the landlord having been allowed the present petition has been filed.

5. In my view, this is not a fit case for interference under Article 227 of the Constitution of India in as much as the lower Appellate Court has concurred with the findings of the Trial Court on all the three grounds reproduced above and held that a case is made out for eviction of the present petitioner. In so far as the ground of arrears of rent is concerned, there is a clear finding consistent with the oral and documentary evidence that the arrears have not been deposited. Mandate of law is not to deposit the arrears alone but to go on paying the rent regularly during the pendency of the proceedings. The rent has not been so

deposited is the finding on point no.3. The petitioner/original defendant has not paid the rent regularly and, therefore, he is a defaulter. I see no ground to interfere with this finding of fact based as it is on the oral and documentary evidence.

6. In so far as non user and acquiring suitable accommodation is concerned, on point nos. 4 and 5 the lower Appellate Court has referred to photographs and admission of the present petitioner during the cross-examination. The averment is that no one from the petitioner's family is residing in the suit premises. The premises are locked and not used. "Datta Kripa" is the residence acquired by the present petitioner and the petitioner and his family has moved in there is also admitted position. Thus, when the petitioner/original defendant admits that there is no electricity supply, water supply nor there is telephone connection and premises are not used and he has moved into a bungalow which is of 1800 sq.ft., then, this is not a fit case for interference under Article 227 of the Constitution of India. The petition is summarily dismissed.

7. At this stage, Shri Vaidya requests that six months time be granted to vacate the premises. Upon the petitioner/tenant executing an undertaking to the Trial Court within a period of 15 days from today that no third party rights would be created in respect of the suit premises in any manner so also that the petitioner would pay the rent regularly it is directed that the Trial Court's decree shall not be executed for a period of six months. However, in case of default in furnishing the undertaking in the aforesaid terms or complying with the same in as much as refusing to hand over possession after six months would entail the petitioner being evicted from the premises with police assistance, if necessary.

(S.C.DHARMADHIKARI J.)